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*Opinion*

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NEW HAMPSHIRE LAW LIBRARY

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CONCORD, N.H.

Mr. James J. Barry, Commissioner  
Department of Public Welfare  
State House Annex  
Concord, New Hampshire

Dear Mr. Barry:

This is in response to your letter of March 28th, requesting our opinion as to whether services performed in the employ of the Wilton Public and Gregg Free Library constitute employment as defined in RSA 101:2, II (supp), as amended by Laws 1957, 48:2.

We are advised that the Library has in its employ a librarian and a janitor.

If the Wilton Public and Gregg Free Library is an agency of the Town of Wilton the librarian and the janitor must be considered as employees of the political subdivision and must be covered by Social Security.

The Social Security Administration, in considering this problem, takes the position that if libraries are considered as an integral part of a political subdivision, service performed in the employ of the library must be considered as employment by the political subdivision. Prior to February 1896, the Wilton Public Library was wholly supported by the town. In that year a trust fund was established for the purpose of purchasing new books for the library. In 1907, under a deed of trust, the Town of Wilton received land and buildings which constitute the present library premises. Under the deed of trust the premises are known as the Gregg Free Library. This trust agreement provided for the appointment of a self-perpetuating Board of Trustees. Subsequently, in 1912, another gift in the amount of \$25,000 was received from the same source to be held in trust, the income to be used for the maintenance of the library. For many years after that income from trust funds was sufficient to cover library expenses and the town made no library appropriations. From 1940 to the present, however, the town has annually appropriated sums ranging from \$300 to \$1500. This was necessitated by increased maintenance costs and other expenses.

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Mr. James J. Barry, Commissioner

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A total of fifteen separate funds are administered by the self-perpetuating Board of Trustees provided for in the deed of trust. The largest of these funds, the Clara Lewis Fund, accounted for receipts in excess of \$1300 in 1956. A trustees report of receipts and disbursements is annually made to the town and is printed in the town report. In the report the Trustees of the Gregg Free Library are listed among town officers. The town appropriation for library purposes in 1956 was in the amount of \$1500. Total receipts exceeded \$7200 and revenue from the David A. Gregg Fund amounted to \$858. The Town of Wilton has no library trustees except those provided for under the deed of trust.

We are of the opinion that the Wilton Public and Gregg Free Library is an integral part of the Town of Wilton and that services performed by its librarian and janitor constitute employment within the meaning of RSA 101:2, II (supp), as amended by Laws 1957, 48:2. Under RSA 202:6, a town is not required to elect library trustees where a free public library has been acquired by the town, in whole or in part, by donation or bequest, where a different method of choosing trustees is provided. In such cases the trustees appointed under the terms of the gift instrument perform the duties ordinarily undertaken by elected library trustees. Since the only essential difference between the regularly elected library trustees and the private trustees authorized by RSA 206 is the method of appointment, we are of the opinion that the library must be considered as an agency of the Town of Wilton.

Very truly yours,

Elmer T. Bourque  
Assistant Attorney General

ETB/lh